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7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT**
9 **(SAN FRANCISCO DIVISION)**

10 In re:

11 PG&E CORPORATION

Bankruptcy Case

12 No. 19-30088-DM

13 -and-

Chapter 11

14 (Lead Case)

15 PG&E GAS AND ELECTRIC COMPANY

(Jointly Administered) Case

16 Debtors

No. 19-30088-D

17 vs

18 Theresa Ann McDonald

Proof of Claim 54975

19 Creditor

Filed October 21, 2019

20 Camp Fire

21 Judge: Honorable Dennis Montali

23 Emergency Pleading to Record

24 Details of Objection to Confirmation

25 of Case No. 19-30088-DM

27 Relief Requested: Consider the

28 Fairness of the Objections I raise

1 and the Possibility of Implementing
2 the Proposed Solutions Before
3 Issuing A Decision to Confirm the
4 Proposed Plan

5
6 I am a fire claimant in the above referenced case. I lost my home at 5044 Russell Drive,
7 Paradise, CA on November 8, 2018 during the Camp Fire. My Proof of Claim Number is 54975.
8 I first indicated my objection to PG&E's settlement offer by voting to reject the Plan.

9 The following is a list of just a few of the reasons why I object to the Confirmation of the
10 *Amended Chapter 11 Plan Debtor's and Shareholder Proponents' Joint Chapter 11 Plan of*
11 *Reorganization Dated May 22, 2020* (the Plan) (Document 7521), and the associated documents
12 that are an integral part of the feasibility of the Plan, including the eight *Supplements To Plan*
13 *Supplement....*

14
15 **First:** I object to the Confirmation of the Plan because even as of June 14, 2020 it is not a
16 finalized document. The Debtors and Shareholder Proponents retain their right to modify the
17 plan.

18
19 "Subject to the Certain Consent Rights set forth in Article I of this
20 Plan, the Plan may be amended, modified, or supplemented by
21 the Plan Proponents, in the manner provided for by section 1127
22 of the Bankruptcy Code or as otherwise permitted by law without
23 additional disclosure pursuant to section 1125 of the Bankruptcy
24 Code, except as the Bankruptcy Court may otherwise direct, so
25 long as such action does not materially and adversely affect the
26 treatment of holders of Claims or Interests hereunder. The Plan
27 Proponents may institute proceedings in the Bankruptcy Court to
28 remedy any defect or omission or reconcile any inconsistencies in
29 the Plan or the Confirmation Order with respect to such matters
30 as may be necessary to carry out the purposes and effects of the
31 Plan and any holder of a Claim or Interest that has accepted the
32 Plan shall be deemed to have accepted the Plan as so amended,

1 modified, or supplemented. Prior to the Effective Date, the Plan
2 Proponents may make appropriate technical adjustments and
3 modifications to the Plan without further order or approval of the
4 Bankruptcy Court; *provided*, that such technical adjustments and
5 modifications do not materially and adversely affect the
6 treatment of holders of Claims or Interests." (Document 7521,
7 Section 12.6 page 92 of 107) (Apparently unchanged in Document
8 7937, page 94 of 212)

9 Why do I object to Section 12.6? Under Article I the term Effective Date is defined as:
10

11 "....a Business Day on or after the Confirmation Date selected by
12 the Debtors, on which the conditions to the effectiveness of the
13 Plan specified in Section 9.2 hereof have been satisfied or
14 effectively waived in accordance with the terms hereof."
15 (Document 7521, Paragraph 1.58) (Apparently unchanged in
16 Document 7937)

17 Section 9.2 lists fifteen (15) different requirements that must be met prior to the Effective
18 Date of the Plan. The last of those requirements is:

19
20 "The Plan shall not have been materially amended, altered, or
21 modified from the Plan as confirmed by the Confirmation Order,
22 unless such material amendment, alteration or modification has
23 been made in accordance with Section 12.6 of the Plan."
24 (Document 7521, Section 9.2(o)) (Apparently unchanged in
25 Document 7937)

26 This is just one example of the types of pitfalls the Plan is riddled with. The Debtors and
27 Shareholder Proponents can modify the Plan without the Bankruptcy Court's approval until the
28 Effective Date. The Effective Date is dependent upon 15 requirements, one of which is that the
29 Plan has not been amended, altered, or modified from the Plan as confirmed by the Confirmation
30 Order unless such amendment, alteration, or modification is made before the Effective Date.
31 Combined, the ability of the Debtors and Shareholder Proponents to amend, alter, or modify the
32 Plan AFTER it is confirmed by the Confirmation Order, without the Bankruptcy Court's
33 approval or order is unlimited until the Effective Date, and they determine the Effective Date.

1 Granted, Section 12.6 limits the Plan Proponents to, “appropriate technical adjustments
2 and modifications to the Plan” without an order or approval of the Bankruptcy Court, and only if,
3 “such technical adjustments and modifications do not materially and adversely affect the
4 treatment of holders of Claims or Interests.” However, I was unable to find definitions for
5 “technical adjustments and modifications” or “adverse affect on the treatment of holders of
6 Claims or Interests”; neither was I able to find anything that defined who was responsible for
7 determining if an adjustment or modification was of a technical nature or if such change had an
8 adverse affect on the treatment of holders of Claims or Interests.

9 Evidence of the problem this fluidity creates for the Court can be found in Document
10 7936, the *Trade Committee's Joinder To The Official Committee Of Unsecured Creditors'*
11 *Statement In Response To Plan Proponents' Response And Proposed Modification [DI 7896]*
12 *And Objection To The Notice Of Filing of Seventh Supplement To Plan Supplement In*
13 *Connection With The Debtors' And Shareholder Proponents' Joint Chapter 11 Plan Of*
14 *Reorganization [D.I. 7894].*

15
16 *“Specifically, the Debtors, through the Seventh Plan Supplement*
17 *and proposed changes to the Confirmation Order..., have*
18 *unilaterally determined that they should be given fifteen (15)*
19 *business days from the entry of the Confirmation Order to*
20 *determine whether executor contracts or leases should be*
21 *assumed or rejected, when under this Court's Disclosure*
22 *Statement (defined below) and the Plan itself, the deadline to*
23 *make that decision has already passed.” (Document 7936, page 2*
24 *of 7, lines 14-22)*

25 To summarize my first objection: The Plan is full of complicated language that appears
26 to have the intention of allowing the Debtors and Shareholder Proponents the freedom to make
27 changes with no oversight by the Court or anyone else. So far as I could tell they are not
28 required to provide notice of any such changes to the Fire Claimants, so we won't have the
29 information we would need to lodge a complaint or appeal with the Bankruptcy Court, or any
30 other State or Federal Court. Claimants are completely unprotected.

1 **Second:** I object to the fact that the Court never received information it stated was an
2 important safe-guard to the rights of the Fire Victims. As the Court wrote in its
3 *Recommendation For Withdrawal Of Reference Of Proceeding In Part:*

4
5 "The Debtors are expected to propose reorganization plans that
6 will involve a limited or 'capped' fund for distribution to the
7 wildfire victims and their insurers after plan confirmation and thus
8 provide for the discharge of preconfirmation wildfire liabilities.
9 Consequently, the estimation of the amount of money to be
10 capped is critical for a variety of reasons; in particular it is
11 necessary to assure that the amount is reasonably likely to
12 provide for full satisfaction of the victims' claims for which it is
13 established." (Document 3648, page 4 of 8, lines 13-21)

14 As I pointed out in an earlier pleading, (Document 7820, page 3, lines 10-11), those
15 words are still true. The Debtors did propose a reorganization plan that involves a limited fund
16 for distribution to wildfire victims. And it is still important for this Court to be assured that the
17 limited amount is likely to provide full satisfaction of the victims' claims. This Court has no
18 data on which to base such an assurance.

19 The Federal District Court of Northern California elected not to provide this Court with
20 the requested Estimation of Claims (Document 7858). However, that Court's decision does not
21 negate this Court's obligation to be aware of an estimated total claims amount in order to
22 determine whether or not the proposed \$13.5 billion offered to Fire Victims is a fair and
23 equitable amount. The existence of a full cash offer of \$11 billion dollars to the Subrogation
24 claimants makes it even more imperative that the Court have a means of making that
25 determination. The rights that are the subject of the Subrogation Rights Settlement Agreement
26 only exist in California law after the insured has been made whole.

27 As I pointed out in a separate earlier pleading (Document 7890) which has not yet been
28 ruled upon:

29 "During the settlement negotiations the Parties had available to
30 them extensive regression analyses conducted by economic

1 experts that analyzed past settlement data and isolated past
2 settlement amounts for specific categories of damages that could
3 then be applied to the wildfire claims at issue. This data was
4 supplemented by opinions from highly qualified subject matter
5 experts who considered, among other things, the ways in which
6 the 2017 and 2018 wildfires were both similar and different from
7 the circumstances underlying prior settlements. These experts
8 also offered expertise on the likely magnitude of damages for
9 specific categories of damages as well as issues related to the
10 likelihood of liability with regard to each wildfire. At the time of
11 the settlement, these opinions were well-developed and the
12 Parties were just a week away from exchanging expert reports in
13 the estimation proceedings, **which were to establish a basis for**
14 **the Court to determine the potential damages and likelihood of**
15 **liability with respect to the wildfires in order to establish the**
16 **aggregate amount of Fire Victim Claims. As explained in more**
17 **detail below, this information provided the Parties with a**
18 **substantial basis for negotiating and arriving at the Aggregate**
19 **Fire Victim Consideration.”** (Federal District Court for Northern
20 California Civil Case 3:19-cv-05257-JD Document Number 378,
21 page 5, lines 1-13) (Emphasis mine)

22 The Court does not have a duty to satisfy itself that the Fire Victims are willing to accept
23 \$13.5 billion in settlement; it has a duty to determine that the settlement is fair and equitable.
24 The Court does not have a duty to accept a **negotiated Aggregate Fire Victim Consideration**;
25 it has an obligation to determine an **amount that is reasonably likely to provide for full**
26 **satisfaction of the victims’ claims.**

27 That duty is even greater because of the power given to the Fire Victim Trust Trustee to
28 determine “the allowed amount” of victims’ claims, thereby again causing the **actual amount** of
29 damages to be uncalculated and unestimated. Ignoring the obligation to make a good faith effort
30 to estimate the true amount of total claims opens the door to appeal and could make the award of
31 \$11 billion in the Subrogation Rights Settlement a violation of California law.

32 The Debtors tried to get around the need to produce an amount of actual claims by
33 convincing District Court Judge James Donato that by voting to accept the Plan, which includes

1 a Made Whole Release, the Fire Victims voluntarily gave up their right to full compensation in
2 the event the \$13.5 billion were to fall short of that mark.

3 “12. Consistent with the foregoing, it is expressly understood
4 and agreed by claimant that claimant is waiving and releasing all
5 known or unknown claims under the Made Whole Doctrine. It is
6 expressly understood and agreed by insurer that insurer is waiving
7 and releasing all known or unknown claims under the Made
8 Whole Doctrine as to claimant.” (Document 7521, Exhibit C,
9 Mutual Made Whole Release, page 106 of 107)

10
11 Fire Victims were offered only one option, one that **requires** them to surrender the very
12 valuable right to be Made Whole before their insurer can proceed against the guilty third party
13 for compensation of paid claims. Most Fire Victims are not attorneys. I would argue that
14 relatively few people understood the clause, or even managed to get that far in trying to read the
15 complex and convoluted document we were sent. And I would argue that because the Plan is
16 dependent upon the Mutual Made Whole Release for the legality of both the Fire Victims
17 Settlement Agreement and the Subrogation Rights Settlement Agreement, the Court has an even
18 greater duty to examine the relationship between the amount needed to fully compensate the Fire
19 Victims and the \$13.5 billion settlement amount that is being offered.

20 The Federal and State Agreements (Document 7399) will strip away \$117 million of the
21 value of the “Rights and Causes of Action” and \$204.3 million of the Interest and Excess
22 Monetization that might otherwise be expected to increase the value of the \$13.5 billion
23 settlement amount offered to the remaining Fire Victims. Those agreements did not exist at the
24 time the Plan was submitted to Fire Victims for acceptance or rejection. The Court needs to also
25 consider that Fire Victims had no reason to suspect that there were still huge governmental
26 claims being included within the Fire Victim Trust after all the publicity surrounding the
27 agreements by FEMA to subrogate its claim and the removal of other governmental claims from
28 the Fire Victim Trust.

1 **Third:** I object to the fact that the Subrogation Claimants are getting \$11 billion in cash on
2 the Effective Date and the Fire Victims will have to wait years to get their final payments. The
3 Subrogation Claimants are insurance companies or investment groups that are perfectly capable
4 of carrying large investments for a substantial period of time. The Fire Victim Claimants are
5 mostly people, many of whom have already been waiting for almost 5 years to receive a
6 settlement. The Subrogation Claimants need their cash to increase their profit margin. Most Fire
7 Victims need the cash to rebuild – to rebuild a primary home, possibly rental income property,
8 maybe a small business store front. At least in Paradise the need for the capital infusion is
9 desperate. People are still living in recreational vehicles, some living in their cars 18 months
10 after the fire because there are so few affordable homes or apartments for them to buy or rent.

11 Even with the \$5.4 billion of starting cash, it is going to take time to earn the \$115.3
12 million in interest payable to CAL FIRE. Even with the Registration Rights Agreement, it is
13 going to take time to sell off \$6.75 billion in stock without driving the per-share value down.
14 Any Excess Monetization of such sales is not quickly available for distribution to the Fire
15 Victims. The first \$89 million of gains on the sale of the stock are restricted to the State
16 Agencies, so there will be less cash available to distribute to the Fire Victims. The terms of the
17 State Agencies Settlement Agreement make it very clear that the professionals who negotiated
18 those agreements expect the Fire Victim Trust to be around for many years.

19 **Fourth:** I object to the secrecy that has surrounded the entire bankruptcy proceedings. I am a
20 Party, but I was excluded. I want to know why the attorneys who were supposed to be
21 representing the individual fire victims allowed the Plan and its associated documents to ever
22 reach the Court. How in the name of whatever deity a person may recognize did the reportedly
23 skilled and experienced attorneys of the TCC allow companies and corporations to be served a
24 feast in a palace while human victims stood hungry and homeless? How were settlement
25 amounts reached, and what did the underlying data show? And how can this Court even
26 consider confirming a Plan that puts profits for some ahead of justice for so many innocents.

27 Insurance companies are in the business of taking risks, and any investment group that
28 purchased subrogation rights did so willingly and with the knowledge that there could be delays

1 in getting a return on that investment. No one will ever convince me that any individual who had
2 to flee the inferno that was Paradise on November 8, 2018, wanted that experience.

3 Maybe we should have known what was coming, but we didn't. I don't know how many
4 times I told people I wasn't that worried about fire because if my house burned the whole town
5 would be threatened, and there was no way the professionals would allow that to happen. I guess
6 my faith in the government employees who were supposed to prevent the disaster was misplaced.
7 I can only hope that my faith in the Courts is not misplaced as well.

8 The Debtors point to the high percentage of fire victims who accepted the plan. I point
9 out that they were not offered any alternative that would let them start to move forward. I would
10 also point out that thousands of us **rejected** the Plan and even more of us never got an
11 opportunity to vote because Prime Clerk and their agents took over 6 weeks to deliver
12 solicitation packets, or couldn't find us when packets were returned. Maybe the fact that so
13 many could not be found (was any real attempt made?) will give the Court some idea of the
14 nomadic existence we've been reduced to since the fires. We are trying so hard to find new
15 homes, don't condemn us to more years of waiting.

16 No one should have to accept the idea that a dividend paid or bonus received is more
17 important than the over 100 lives lost in the fires for which this proceeding is supposed to
18 determine compensation. No one should have to accept the idea that profit is more important
19 than justice. The Court's purpose is justice, and sometimes that means protecting the innocents
20 from the decisions of those who are supposed to represent them.

21 **SOLUTIONS:**

22 **First:** Require PG&E to provide the Court with semi-final documents. Not just a semi-final
23 version of the Plan but also a semi-final version of each of the various settlement agreements,
24 registration rights agreements, schedules, claims resolution procedures, supplements and
25 anything else that they want to have part of their Reorganization Plan.

26 Any issues that are still undecided or incomplete should be decided by the Court, and
27 those changes should be incorporated into the final version of each document. Only then will the

1 Court have the ability to review a complete roadmap to the reorganization and make an informed
2 decision whether or not to confirm the Plan. The Plan cannot remain a moving target.

3

4 **Second:** Require the Debtors and the TCC to produce all the final reports and expert opinions
5 and every bit of actual data they claimed they looked at and considered as the foundation for
6 their determination that \$13.5 billion was a suitable amount to fund the Fire Victim Trust. Turn
7 that data over to an independent expert in order to obtain the Estimation of Claims that the
8 Federal District Court of Northern California did not provide this Court. Only then will the
9 Court be able to determine if \$13.5 billion is an amount likely to make fire victims whole and
10 only then will the Court be able to determine if it can legally confirm a plan that provides \$11
11 billion in cash to subrogation claimants.

12

13 **Third:** Forget about the artificial June 30, 2020, deadline. Forget about AB 1054 and the Go
14 Forward Wildfire Fund. Meeting that deadline is not the Court's job. It was PG&E's job, and
15 once again they failed.

16 The legislature can extend that date if necessary, but they can't do the Court's job. The
17 Court's job is to balance the rights and needs of the injured parties against the wisdom and
18 benefit of having PG&E emerge from a bankruptcy proceeding as a viable corporation, able to
19 provide power in a safe manner and still have a profitable future. Do not let the political
20 pressure that is being applied with such a heavy hand damage the longstanding history of
21 integrity and independence that the Courts have maintained.

22 PG&E could have wrapped this proceeding up a month ago, two months ago. Instead
23 they dragged their feet. Now they are trying to force the Court to a rushed decision in order to
24 meet a deadline that was honestly only ever of importance to them. Please do not let PG&E, the
25 State Legislature and the Governor push this Court into a hurried decision that is more likely to
26 be appealed.

27 Order the delivery of the information that apparently was available and that the Federal
28 District Court should have been given 6 months ago. Have the analysis done to arrive at a

1 legitimate, calculated Estimate of Claims, not one that is simply the maximum amount PG&E
2 was willing to forfeit.

3 Take the time needed to weigh the facts of the case, and render a fair and equitable
4 ruling, not the hastily constructed Confirmation Order PG&E is trying to force the Court into,
5 one that will be immediately appealed because it was based on urgency not justice.

6

7 **Fourth:** Shine a bright light on the proceedings of this case. The Court can expose the end
8 result of confidential mediation sessions without revealing the arguments and discussions that
9 resulted in those bargains. Make a reasonable level of summarized data available to not only the
10 Claimants, but to the general public as part of the record of this Court. Continuing to conceal all
11 the actual data involved in this case makes it **appear** that the Court is shielding PG&E, and that
12 weakens the public perception of the Judicial Branch as an independent and impartial guardian of
13 the law.

14

15 **In Conclusion:**

16 I object to the Court being asked to confirm a Plan that is still not finalized. I object to
17 the Court being asked to issue a Confirmation Order when the Debtors and the TCC have
18 withheld the information the Court needs to determine if the Plan is fair to the Fire Victims. I
19 object to the attempt to rush the Court into make a ruling before it takes the time needed to study
20 finalized documents before making a decision. That decision will have a dramatic impact on so
21 many lives, the lives of everyone who is forced to depend on PG&E for power. And more than
22 anything else I object to the veil of secrecy that has been allowed to surround what is supposed to
23 be a proceeding of public record, especially since that veil has eroded the public's perception of
24 the Judiciary as a strong guardian of the law, immune to political pressure and absolutely not for
25 sale to anyone for any price.

26

27 *Theresa Ann McDonald*